

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA)	
)	
)	
v.)	CASE NO. 2:06-CR-144-WKW
)	
PAUL MEREZ GRAHAM)	
)	

ORDER

This case is before the Court on the government's Unopposed Motion to Continue Trial (Doc. # 38). The criminal case is currently set for trial during the January 8, 2007 term. For the reasons set forth below, the Court finds that the trial should be continued pursuant to 18 U.S.C. § 3161(h).

While the grant of a continuance is left to the sound discretion of the trial judge, *United States v. Stitzer*, 785 F.2d 1506, 1516 (11th Cir. 1986), the Court is limited by the requirements of the Speedy Trial Act. The Act provides in part:

In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs.

18 U.S.C. § 3161(c)(1). However, the Act excludes from the 70 day period any continuance based on "[a]ny period of delay resulting from the absence or unavailability of the defendant or essential witness." § 3161(h)(3)(A).

The Court finds that an essential witness is unavailable for the suppression hearing scheduled for November 17, 2006. In support of its motions to continue trial and the suppression hearing, the government represented that a necessary witness, Tommy Conway, had a scheduled trip

out of the state beginning on November 16, 2006. Mr. Conway is thus unavailable. *See United States v. Barragan*, 793 F.2d 1255, 1258 (11th Cir. 1986). Rescheduling the suppression hearing will necessarily require a continuance of the trial date.

Accordingly, it is ORDERED that the government's Unopposed Motion to Continue Trial (Doc. # 38) is GRANTED. Trial in this matter is continued from January 8, 2007, to the criminal term of court beginning on April 23, 2007, at 10:00 a.m.

DONE this the 17th day of November, 2006.

/s/ W. Keith Watkins
UNITED STATES DISTRICT JUDGE